

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61139; File No. SR-NYSEAmex-2009-87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Add Commentary .01 to Rule 934.3NY

December 10, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 7, 2009, NYSE Amex LLC (“NYSE Amex” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .01 to Rule 934.3NY to allow hedging stock, security future or futures contract positions to be represented currently with option facilitations or solicitations in the Trading Crowd (“tied hedge” orders) based on a recently approved rule change of the Chicago Board Options Exchange (“CBOE”).⁴ The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nyse.com>, on the Commission’s Web site at <http://www.sec.gov>, at the Exchange’s principal office and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add Commentary .01 to Rule 934.3NY to allow hedging stock, security future or futures contract positions to be represented currently with option facilitations or solicitations in the Trading Crowd (“tied hedge” orders), based on a recently approved rule change of the CBOE. Rule 934.3NY generally sets forth the procedures by which a floor broker may cross an order with a solicited contra-side order. Currently, transactions executed pursuant to Rule 934.3NY are subject to the restrictions of paragraph (c) of Rule 995NY, Prohibited Conduct, which prohibits trading based on knowledge of imminent undisclosed solicited transactions (commonly referred to as “anticipatory hedging”).

Existing Anticipatory Hedge Rule

By way of background, when Rule 934.3NY was adopted in 2009, the Exchange noted its belief that it is appropriate to permit solicitation between potential buyers and sellers of options in advance of the time they send actual orders to the trading crowd on the Exchange. The Exchange also noted that, if the orders that comprise a solicited transaction are not suitably exposed to the order interaction process on the Trading Floor, the execution of such orders would not be consistent with Exchange rules designed to promote order interaction in an open-outcry auction.⁵ Solicited transactions by definition entail negotiation, and if the orders that comprise a solicited transaction are not adequately exposed to the floor auction, the in-crowd market participants (e.g., Market-Makers in the trading crowd) cannot have sufficient time to digest and react to those orders’ terms. The pre-negotiation inherent in the solicitation process thus can enable the parties to a solicited transaction to preempt the crowd to an execution at the pre-negotiated price. Thus, the Exchange notes, Rule 995NY was designed to preserve the right to solicit orders in advance of submitting a proposed trade to the crowd, while at

the same time assuring that orders that are the subject of a solicitation are exposed to the auction market in a meaningful way. In addition to requiring disclosure of orders,⁶ Rule 995NY provides that it is inconsistent with just and equitable principles of trade for any ATP Holder or associated person, who has knowledge of all the material terms of an originating order⁷ and a solicited order (including a facilitation order) that matches the original order’s price, to enter an order to buy or sell an option of the same class as any option that is the subject of the solicitation prior to the time that the original order’s terms are disclosed to the crowd or the execution of the solicited transaction can no longer reasonably be considered imminent. This prohibition extends to orders to buy or sell the underlying security or any “related instrument,” as that term is defined in the rule.⁸

When Rule 995NY was adopted in 2009, the Exchange believed that maintaining the prohibition on anticipatory hedging was necessary to prevent ATP Holders and associated persons from using undisclosed information about imminent solicited option transactions to trade the relevant option or any closely-related instrument in advance of persons represented in the relevant options crowd. NYSE Amex believes the basic principle remains true today, but changes in the marketplace have caused the Exchange to re-evaluate the effectiveness and efficiency of the existing rule’s procedural requirements. The Exchange believes that increased volatility in the markets, as well as the advent of penny trading in underlying

⁶ For example, the rule requires that the ATP Holder representing an original order that is the subject of a solicitation to disclose the terms of the original order to the crowd before the original order can be executed. This disclosure is intended to eliminate the unfairness that can be associated with pre-negotiated transactions among the parties to the solicitation versus the in-crowd market participants, and would subject the order that is the subject of the solicitation to full auction interaction with other orders in the crowd. In addition, priority is accorded depending on whether the original order is disclosed throughout the solicitation period; whether the solicited order improves the best bid or offer in the trading crowd; and whether the solicited order matches the original order’s limit. Rule 934.1NY contains exceptions to these priority provisions in instances where a crossing participation entitlement is sought.

⁷ An “originating order” is an order respecting an option traded on the Exchange, including a spread, combination, straddle, stock option, security-future-option or any other complex order. See Rule 934.3NY.

⁸ For purposes of Rule 995NY(c), an order to buy or sell a “related instrument,” means, “in reference to an index option, an order to buy or sell securities comprising ten percent or more of the component securities in the index or an order to buy or sell a futures contract on any economically equivalent index.”

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 60499 (August 13, 2009), 74 FR 42350 (August 21, 2009) (order approving SR-CBOE-2009-007).

⁵ For example, Rule 931NY, Manner of Bidding and Offering, requires bids and offers to be made at the post by public outcry, and Rule 934NY imposes order exposure requirements on floor brokers seeking to cross buy orders with sell orders.

stocks and resultant decreased liquidity at the top of each underlying markets' displayed national best bid or offer, it has become increasingly difficult for ATP Holders to assess the ultimate execution prices and the extent of available stock to hedge related options facilitation/solicitation activities, and to manage that market risk. This risk extends to simple and complex orders, and to all market participants involved in the transaction (whether upstairs or on-floor) because of the uncertainty of the extent to which the market participant will participate in the transaction, the amount of time associated with the auction process, and the likelihood that the underlying stock prices in today's environment may be difficult to assess and change before they are able to hedge. These circumstances make it difficult to obtain a hedge, difficult to quote orders and difficult to achieve executions, and can translate into less liquidity in the form of smaller size and wider quote spreads, fewer opportunities for price improvement, and the inefficient handling of orders. Additionally, more and more trading activity appears to be taking place away from the exchange-listed environment and in the over-the-counter ("OTC") market, which by its nature is not subject to the same trade-through type risks present in the exchange environment. Therefore, the Exchange is seeking to make its trading rules more efficient not only to address the market risk and execution concerns, but also to effectively compete with and attract volume from the OTC market. What is more, Market Makers' trading strategies have evolved. Whereas before Market Makers tended to trade based on delta risk,⁹ now market-making strategy is based more on volatility.¹⁰ The tied

hedge transaction procedures (described below) are designed in a way that is consistent with this shift toward a volatility trading strategy, and makes it more desirable for Market-Makers to compete for orders that are exposed through the solicitation process.

Proposed Exception to Anticipatory Hedge Rule

In order to address the concerns associated with increased volatility and decreased liquidity and more effectively compete with the OTC market, the Exchange is proposing to adopt a limited exception to the anticipatory hedging restrictions that would permit the representation of hedging stock positions in conjunction with option orders, including complex orders, in the options trading crowd (a "tied hedge" transaction). The Exchange believes this limited exception remains in keeping with the original design of Rule 934.3NY, but sets forth a more practicable approach considering today's trading environment that will provide the ability to hedge in a way that will still encourage meaningful competition among upstairs and floor brokers. Besides stock positions, the proposal would also permit security futures positions to be used as a hedge. In addition, in the case where the order is for options on indices, options on exchange-traded funds ("ETF") or a related instrument may be used as a hedge. A "related instrument" would mean, in reference to an index option, securities comprising ten percent or more of the component securities in the index or a futures contract on any economically equivalent index applicable to the option order. A "related instrument" would mean, in reference to an ETF, a futures contract on any economically equivalent index applicable to the ETF underlying the option order.¹¹

With a tied hedge transaction, Exchange ATP Holders would be permitted to first hedge an option order with the underlying security, a security future or futures contract, as applicable, and then forward the option order and the hedging position to an Exchange floor broker with instructions to represent the option order together with the hedging position to the options trading crowd. The in-crowd market participants that chose to participate in the option transaction must also

participate in the hedging position. First, under the proposal, the original option order must be in a class designated as eligible for a tied hedge transaction as determined by the Exchange, including FLEX Options classes.¹² The original option order must also be within designated tied hedge eligibility parameters, which would be determined by the Exchange and would not be smaller than 500 contracts.¹³ The Exchange notes that the minimum order size would apply to an individual originating order.¹⁴ Multiple originating orders could not be aggregated to satisfy the requirement (though multiple contra-side solicited orders could be aggregated to execute against the originating order). The Exchange states that the primary purpose of this provision is to limit use of the tied hedge procedures to larger orders that might benefit from an ATP Holder's ability to execute a facilitating hedge. Assuming an option order meets these eligibility parameters, the proposal also includes a number of other conditions that must be satisfied.

Second, the proposal would require that, prior to entering tied hedge orders on behalf of customers, the ATP Holder must deliver to the customer a one-time written notification informing the customer that their order may be executed using the Exchange's tied hedge procedures. Under the proposal, the written notification must disclose the terms and conditions contained in the proposed rule and be in a form approved by the Exchange. Given the minimum size requirement of 500 contracts per order, the Exchange believes that use of the tied hedges procedures will generally consist of orders for the accounts of institutional or sophisticated, high net worth investors. The Exchange therefore believes that a one-time notification delivered by the ATP Holder to the customer would be sufficient, and that

⁹ The price of an option is not completely dependent on supply and demand, nor on the price of the underlying security. Market-Makers' price options based on basic measures of risk as well. One of these such measures, delta, is the rate of change in the price of an option as it relates to changes in the price of the underlying security, security future or futures contract. The delta of an option is measured incrementally based on movement in the price of the underlying security, security future or futures contract. For example, if the price of an option increases or decreases by \$1.00 for each \$1.00 increase or decrease in the price of the underlying security, the option would have a delta of 100. If the price of an option increases or decreases by \$0.50 for each \$1.00 increase or decrease in the price of the underlying security, the option would have a delta of 50.

¹⁰ Volatility is a measure of the fluctuation in the underlying security's market price. Market-Makers that trade based on volatility have options positions that they hedge with the underlying. Once hedged, the risk exposure to the Market-Maker is realized volatility and implied volatility. Realized volatility is the actual volatility in the underlying. Implied volatility is determined by using option prices currently existing in the market at the time rather

than using historical data on the market price changes of the underlying.

¹¹ For example, a tied hedge order involving options on the iShares Russell 2000 Index ETF might involve a hedge position in the underlying ETF, security futures overlying the ETF, or futures contracts overlying the Russell 2000 Index.

¹² FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

¹³ The designated classes and minimum order size applicable to each class would be communicated to ATP Holders via Regulatory Circular. For example, the Exchange could determine to make the tied hedge transaction procedures available in options class XYZ for orders of 1,000 contracts or more. Such a determination would be announced via Regulatory Circular, which would include a cumulative list of all classes and corresponding sizes for which the tied hedge procedures are available.

¹⁴ In determining whether an individual original order satisfies the eligible order size requirement, the proposed Rule text states that any Complex Order must contain one leg alone which is for the eligible order size or greater.

an order-by-order notification would be unnecessary and overly burdensome.

Third, an ATP Holder would be required to create an electronic record that it is engaging in a tied hedge order in a form and manner prescribed by the Exchange. The Exchange states that the purpose of this provision is to create a record to ensure that hedging trades would be appropriately associated with the related options order and appropriately evaluated in the Exchange's surveillance program. The Exchange believes that this requirement should enable the Exchange to monitor for compliance with the requirements of the proposed rule, as discussed below, by identifying the specific purchase or sell orders relating to the hedging position.

Fourth, the proposed rule would require that ATP Holders that have decided to engage in tied hedge orders for representation in the trading crowd would have to ensure that the hedging position associated with the tied hedge order is comprised of a position that is designated as eligible for a tied hedge transaction. Eligible hedging positions would be determined by the Exchange for each eligible class and may include (i) the same underlying stock applicable to the options order, (ii) a security future overlying the same stock applicable to the option order, or (iii) in reference to an option on an index or an ETF, a "related instrument" (as described above). For example, for options overlying XYZ stock, the Exchange may determine to designate the underlying XYZ stock or XYZ security futures or both as eligible hedging positions.¹⁵

The Exchange states that the purpose of this provision is to ensure that the hedging position would be for the same stock, equivalent security future or related instrument, as applicable, thus allowing crowd participants who may be considering participation in a tied hedge order to adequately evaluate the risk associated with the option as it relates to the hedge. With stock positions in particular, the Exchange notes that occasionally crowd participants hedge option positions with stock that is related to the option, such as the stock of an issuer in the same industry, but not the actual stock associated with the option. Except as otherwise discussed above for index options, the proposed rule change

would not allow such a "related" hedging stock position, but would require the hedging stock position to be the actual security underlying the option.

Fifth, the proposal would require that the entire hedging position be brought without undue delay to the trading crowd. In considering whether the hedging position is presented without "undue delay," the Exchange believes that ATP Holders should continue to have the same ability to shop an order in advance of presenting it to the crowd and should be able to enhance that process through obtaining a hedge. The Exchange also believes that, once a hedge is obtained, the order should be brought to the crowd promptly in order to satisfy the "undue delay" requirement. In addition, the proposal would require that the hedging position be announced to the Trading Crowd concurrently with the options order, offered to the crowd in its entirety, and offered at the execution price received by the ATP Holder introducing the order to any in-crowd market participant who has established parity or priority for the related options. In-crowd market participants that participate in the option transaction must also participate in the hedging position on a proportionate basis¹⁶ and would not be permitted to prevent the option transaction from occurring by giving a competing bid or offer for one component of the tied hedge order. The Exchange states that the purpose of these requirements is to ensure that the hedging position represented to the crowd would be a good faith effort to provide in-crowd market participants with the same opportunity as the ATP Holder introducing the tied hedge order to compete most effectively for the option order.

For example, if an ATP Holder introducing a tied stock hedge order were to offer 1,000 XYZ option contracts to the crowd (overlying 100,000 shares of XYZ stock) and concurrently offer only 30,000 of 100,000 shares of the underlying stock that the ATP Holder obtained as a hedge, crowd participants might only be willing or able to participate in 300 of the option contracts offered if the hedging stock position cannot be obtained at a price as favorable as the stock hedging position offering price, if at all. The Exchange states that the effect of this would be to place the crowd at a disadvantage

relative to the introducing ATP Holder for the remaining 700 option contracts in the tied stock hedge order, and thus create a disincentive for the crowd to bid or offer competitively for the remaining 700 option contracts. The Exchange believes the requirement that the hedging position be presented concurrently with the option order in the crowd and offered to the crowd in its entirety at the execution price received by the ATP Holder introducing the order should ensure that the crowd would be competing on a level playing field with the introducing ATP Holder to provide the best price to the customer.

Sixth, the proposal would require that the hedging position not exceed the options order on a delta basis. For example, in the situation where a tied stock hedge order involves the simultaneous purchase of 50,000 shares of XYZ stock and the sale of 500 XYZ call contract (known as a "buy-write"), and the delta of the option is 100, it would be considered "hedged" by 50,000 shares of stock. Accordingly, the proposed rule would not allow the introducing ATP Holder firm to purchase more than 50,000 shares of stock in the hedging stock position. The Exchange believes that it is reasonable to require that the hedging position be in amounts that do not exceed the equivalent size of the related options order on a delta basis, and not for a greater number of shares. The Exchange believes that the proposed rule change would support its view that the ATP Holder introducing the tied hedge order be guided by the notion that any excess hedging activity could be detrimental to the eventual execution price of the option order. Consequently, while delta estimates may vary slightly, the introducing ATP Holder would be required to assume hedging positions not to exceed the equivalent size of the options order on a delta basis.¹⁷

¹⁷ The Exchange notes that there may be scenarios where the introducing ATP Holder purchases (sells) less than the delta, *e.g.*, when there is not enough stock is available to buy (sell) at the desired price. In such scenarios, the introducing ATP Holder would present the stock that was purchased (sold) and share it with the in-crowd market participants on equal terms. This risk of obtaining less than a delta hedge is a risk that exists under the current rules because of the uncertainty that exists when market participants price an option and have to anticipate the price at which they will be able to obtain a hedge. The proposed tied hedge procedures are designed to help reduce this risk, but the initiating ATP Holder may still be unable to execute enough stock at the desired price. To the extent the initiating ATP Holder is able to execute any portion of the hedge, the risk exposure to the initiating ATP Holder and the in-crowd market participants would be diminished because those shares would be "tied up" and available for everyone that participates on the resulting tied hedge transaction. The Exchange

¹⁵ As with designated classes and minimum order size, the eligible hedging positions applicable to each class would be communicated to the ATP Holder via Regulatory Circular, which would include a cumulative list of all classes and corresponding sizes for which the tied hedge procedures are available. See note 13, *supra*.

¹⁶ For example, if an in-crowd market participant's allocation is 100 contracts out of a 500 contract option order (1/5), the same in-crowd market participant would trade 10,000 shares of a 50,000 stock hedge position tied to that option order (1/5).

The Exchange believes that the delta basis requirement, together with the additional conditions that an introducing ATP Holder bring the hedging position without undue delay to the trading crowd and announce it concurrently with the option order, offer it to the crowd in its entirety, and offer it at the execution price received by the ATP Holder or to any in-crowd market participant who has established parity or priority, will help assure that the hedging activity is bona fide and not for speculative or manipulative purposes. Additionally, the Exchange believes these conditions will help assure that there is no adverse effect on the auction market because, as discussed above, in-crowd market participants will have the same opportunity as the ATP Holder introducing the tied hedge order to compete for the option order and will share the same benefits of limiting the market risk associated with hedging. The Exchange believes that customers will also benefit if the market risks are limited in the manner proposed. Once an original order is hedged, there is no delta risk. With the delta risk minimized, quotes will likely narrow as market participants (whether upstairs or on-floor) are better able to hedge and compete for orders. For example, Market-Makers could more easily quote markets to trade against a customer's original order based on volatility with the delta risk minimized, which would ultimately present more price improvement opportunities to the original order.¹⁸

At this time, the Exchange is not proposing any special priority provisions applicable to tied hedge transactions, though it intends to evaluate whether such changes are desired and may submit a separate rule filing on this subject in the future. Under the instant proposal, all tied hedge transactions will be treated as Complex Orders (regardless of whether the original order was a simple or complex order). Priority will be afforded in accordance with the Exchange's existing open outcry allocation and reporting procedures for Complex

does not believe that the initiating ATP Holder would have an unfair advantage by having the ability to pre-facilitate less than a delta hedge because the proposed procedures would require the in-crowd market participants to get a proportional share of the hedge. To the extent more stock is needed to complete a hedge, the initiating ATP Holder and the in crowd market participants would have the same risk exposure that they do today.

¹⁸ The Exchange also believes that the proposed exception to the anticipatory hedging procedures will assist in the Exchange's competitive efforts to attract order flow from the OTC market, which may result in increased volume on the exchange markets.

Orders.¹⁹ Any resulting tied hedge transactions will also be subject to the existing NBBO trade-through requirements for options and stock, as applicable. In this regard, the Exchange believes that the resulting option and stock components of the tied hedge transactions may qualify for various NBBO trade through exceptions including, for example, the complex trade exception to the Options Order Protection And Locked/Crossed Market Plan²⁰ ("Order Protection Plan") (except in the scenario where the originating order is a simple order) and the qualified contingent trade exception to Rule 611(a) of Regulation NMS for the stock component.²¹

¹⁹ Generally, a Complex Order may be expressed in any increment and executed at a net debit or credit price with another ATP Holder without giving priority to equivalent bids (offers) in the individual series legs that are represented in the trading crowd or in the Consolidated Book provided at least one leg of the order better the corresponding bid (offer) in the Consolidated Book. For stock-option orders and security future-option orders, this means that the options leg of the order has priority over bids (offers) of the trading crowd but not over bids (offers) in the Consolidated Book. In addition, for complex orders with non-option leg(s), such as stock-option orders, a bid or offer is made and accepted subject to certain other conditions, including that the options leg(s) may be cancelled at the request of any ATP Holder that is a party to the transaction if market conditions in any other market(s) prevent the execution of the non-options leg(s) at the agreed price(s). See, e.g., NYSE Amex Rules 960NY, Trading Differentials, 963NY, Priority and Order Allocation Procedures—Open Outcry, 963.1NY, Complex Order Transactions, 965NY, Contract Made on Acceptance of Bid or Offer, and 934.3NY. Any crossing participation entitlement would also apply to the tied hedge procedures in accordance with Rule 934.3NY.

²⁰ A "complex trade" is defined as: (i) The execution of an order in an option series in conjunction with the execution of one or more related orders in different option series in the same underlying security occurring at or near the same time in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.0) and for the purpose of executing a particular investment strategy; or (ii) the execution of a stock option order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock ("convertible security") coupled with the purchase or sale of option contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock or convertible security necessary to create a delta neutral position, but in no case in a ratio greater than 8 option contracts per unit of trading of the underlying stock or convertible security established for that series by the Options Clearing Corporation. See paragraph (4) of NYSE Amex Rule 990NY, Definitions (applicable to the Order Protection Plan), and subparagraph (b)(7) to NYSE Amex Rule 991NY, Order Protection.

²¹ A "qualified contingent trade" is defined as a transaction consisting of two or more component orders, executed as agent or principal, where: (i) At least one component order is in an NMS stock; (ii) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (iii) the

The Exchange recognizes that, at the time a tied hedge transaction is executed in a Trading Crowd, market conditions in any of the non-options market(s) may prevent the execution of the non-options leg(s) at the price(s) agreed upon. For example, the execution price may be outside the non-options market's best bid or offer ("BBO"), e.g., the stock leg is to be executed at a price of \$25.03 and the particular stock market's BBO is \$24.93–\$25.02, and such an execution would normally not be permitted unless an exception applies that permits the trade to be reported outside the BBO. The Exchange notes that the possibility of this scenario occurring exists with complex order executions today and tied hedge transactions would present nothing unique or novel in this regard. In the event the conditions in the non-options market continue to prevent the execution of the non-option leg(s) at the agreed price(s), the trade representing the options leg(s) of the tied hedge transaction may ultimately be cancelled in accordance with NYSE Amex's proposed rules.²²

The following examples illustrate these priority principles:

- **Simple Original Order:** Introducing member receives an original customer order to buy 500 XYZ call options, which has a delta of 100. The introducing member purchases 50,000 shares of XYZ stock on the NYSE for an average price of \$25.03 per share. Once the stock is executed on the NYSE, the introducing member, without undue delay, announces the 500 contract option order and 50,000 share tied stock hedge at \$25.03 per share to the NYSE Amex trading crowd.

- **Complex Original Order:** Introducing member receives an original customer stock-option order to buy 500 XYZ call options and sell 50,000 shares

execution of one component is contingent upon the execution of all other components at or near the same time; (iv) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined at the time the contingent order is placed; (v) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled; and (vi) any trade throughs caused by the execution of an order involving one or more NMS stocks (each an "Exempted NMS Stock Transaction") is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade. See Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008).

²² The Exchange notes that, in the event of a cancellation, ATP Holders may be exposed to the risk associated with holding the hedge position. The Exchange intends to address this point in a circular to ATP Holders.

of XYZ stock. The introducing member purchases 50,000 shares of XYZ stock on the NYSE for an average price of \$25.03 per share. Once the stock is executed on the NYSE, the introducing ATP Holder, without undue delay, announces the 500 contract option order and 50,000 share tied stock hedge at \$25.03 per share to the trading crowd.

In either the simple or complex order scenario, the next steps are the same and are no different from the procedures currently used to execute a Complex Order on NYSE Amex in open outcry.

- The in-crowd market participants would have an opportunity to provide competing quotes for the tied hedge package (and not for the individual component legs of the package). For example, assume the best net price is \$24.53 (equal to \$0.50 for each option contract and \$25.03 for each corresponding share of hedging stock).

- The option order and hedging stock would be allocated among the in-crowd market participants that established priority or parity at that price, including the initiating ATP Holder, in accordance with the standard allocation procedures, with the options leg being executed and reported on NYSE Amex and the stock leg being executed and reported on the stock market specified by the initiating ATP Holder.

For example, the introducing member might trade 40% pursuant to an open outcry crossing entitlement (200 options contracts and 20,000 shares of stock) and the remaining balance might be with three different Market-Makers that each participated on 20% of the order (100 options contracts and 10,000 shares of stock per Market-Maker).

- *The resultant tied hedge transaction:* (i) Would qualify as a “complex trade” under the Order Protection Plan and the execution of the 500 option contracts with the market participants would not be subject to the NBBO for the particular option series in the scenario where the originating order is a complex order (not a simple order); and (ii) would qualify as a “qualified contingent trade” under Regulation NMS and the execution of the 30,000 shares of stock (the original 50,000 shares less the initiating member’s 20,000 portion) with the market participants would not be subject to the NBBO for the underlying XYZ stock.

- The execution of the options leg would have to satisfy the Exchange’s intra-market priority rules for Complex Orders (including that the execution price may not be outside the NYSE Amex BBO). Thus, if the Exchange’s BBO for the series was \$0.40–\$0.55, the execution could take place at or inside that price range (e.g., at the quoted price

of \$0.50) and could not take place outside that price range (e.g., not at \$0.56).

- Similarly, the execution of the stock at \$25.03 per share would have to satisfy the intra-market priority rules of the market(s) where the stock is to be executed (including that the execution price may not be outside that market’s BBO) or, alternatively, qualify for an exception that permits the trade to be reported outside the executing market(s)’ BBO.

- If market conditions in the executing market(s) prevent the execution of the stock leg(s) at the price(s) agreed upon from occurring (e.g., the BBO remains at \$24.93–\$25.02), then the options leg(s) could be cancelled at the request of any member that is a party to that trade.

While the particular circumstances surrounding each transaction on the Exchange’s trading floor are different, the Exchange does not believe, as a general proposition, that the tied hedge procedures would be inherently harmful or detrimental to customers or have an adverse affect on the auction market. Rather, the Exchange believes the procedures will improve the opportunities for an order to be exposed to a competitive auction and represent an improvement over the current rules. The fact that the parties to such a trade end up fully hedged may contribute to the best execution of the orders and, in any event, participants continue to be governed by, among other things, their best execution responsibilities. The Exchange also believes that the proposed tied hedge procedures are fully consistent with the original design of Rule 995(c)NY, which, as discussed above, was designed to eliminate the unfairness that can be associated with a solicited transaction and to encourage meaningful competition. The tied hedge procedures will keep in-crowd market participants on equal footing with solicited parties in a manner that minimizes all parties’ market risk while continuing to assure that orders are exposed in a meaningful way.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act²³ in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, as it will improve the

opportunities for an order to be exposed to a competitive auction and represent an improvement over the current rules and will keep in-crowd market participants on equal footing with solicited parties in a manner that minimizes all parties’ market risk while continuing to assure that orders are exposed in a meaningful way.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²⁴ and Rule 19b–4(f)(6) thereunder.²⁵ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁶ and Rule 19b–4(f)(6)(iii) thereunder.²⁷

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

²⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁵ 17 CFR 240.19b–4(f)(6).

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

²³ 15 U.S.C. 78f(b).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAmex-2009-87 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2009-87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSEAmex-2009-87 and should be submitted on or before January 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61144; File No. SR-NYSEAmex-2009-85]

Self-Regulatory Organizations; NYSE Amex, Inc.; Notice of Filing of Proposed Rule Change To Establish the NYSE Amex Realtime Reference Prices Service

December 10, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on November 30, 2009, the NYSE Amex, Inc. ("NYSE Amex" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish the NYSE Amex Realtime Reference Prices service and to establish a flat monthly fee and a per-query fee for that service. The service allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange ("NYSE Amex Realtime Reference Prices"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. The Service

The NYSE Amex Realtime Reference Prices service will provide a low-cost service that makes real-time prices widely available to casual investors, provides vendors with a useful real-time substitute for delayed prices; and relieves vendors of administrative burdens. The product responds to the requirements for distribution of real-time last sale prices over the Internet for reference purposes, rather than as a basis for making trading decisions.

The NYSE Amex Realtime Reference Prices service will allow Internet service providers, traditional market data vendors, and others ("NYSE Amex-Only Vendors") to make available NYSE Amex Realtime Reference Prices on a real-time basis.⁴ The NYSE Amex Realtime Reference Price information includes last sale prices for all securities that trade on the Exchange, updated in real-time. In addition, the product also includes open, high and low prices and cumulative volume. The Exchange anticipates that it will update these data elements every second, though initially it will update them once per minute. The product does not include bid/ask quotations or the size of each trade.

The Exchange will not permit NYSE Amex-Only Vendors to provide NYSE Amex Realtime Reference Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE Amex-Only Vendor also provides consolidated displays of Network A last sale prices available in an equivalent manner, as Rule 603(c)(1) of Regulation NMS requires.

The service would eliminate some of the administrative burdens associated with the distribution of real-time CTA prices. The service would feature a flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

⁴ The Exchange notes that it will make the NYSE Amex Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA and Nasdaq/UTP Plans.

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.